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COMMITTEE ON CRIME PREVENTION AND CONTROL
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Agenda item 5*

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft resolution submitted by Albert L. O. Metzger (Sierra Leone), Vice-Chairman of the Committee, on the basis of informal consultations held on draft resolution IV contained in document E/AC.57/1990/5/Add.5

The Committee on Crime Prevention and Control recommends to the Economic and Social Council that it transmit the draft resolution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders:

"Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released

"The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Bearing in mind the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

"Bearing in mind also, the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, 2/ which, in principle 37, stipulate that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

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* E/AC.57/1990/1.

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

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"Recalling the Seventh Congress resolution 13, 3/ on transfer of supervision of foreign offenders who have been conditionally sentenced or conditionally released, in which the Committee on Crime Prevention and Control was requested to study this subject and to consider the possibility of the formulation of a model treaty in this area,

"Acknowledging the valuable contributions made by Governments, non-governmental organizations and individual experts to the drafting of the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, in particular the International Expert Meeting on United Nations and Law Enforcement, held under the auspices of the United Nations at Baden, Austria, from 16 to 19 November 1987, the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: "United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting", 4/ and by the five regional preparatory meetings, for the Eighth Congress,

"Convinced that the establishment of bilateral and multilateral arrangements for transfer of supervision of offenders conditionally sentenced or conditionally released will greatly contribute to the development of more effective international co-operation in penal matters,

"Conscious of the need to respect human dignity and recalling the rights conferred upon every person involved in criminal proceedings, as embodied in the Universal Declaration of Human Rights 5/ and the International Covenant on Civil and Political Rights, 6/

"1. Adopts the Model Treaty on Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, set forth in the annex to the present resolution, as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral or multilateral treaties aimed at improving co-operation in matters of crime prevention and criminal justice;

"2. Invites Member States, if they have not yet established treaty relations with other States in the area of extradition, or if they wish to revise existing treaty relations, to take into account the Model Treaty whenever doing so;

"3. Urges all Member States further to strengthen international co-operation in criminal justice;

"4. Also urges Member States to inform the Secretary-General periodically of efforts undertaken to establish arrangements on transfer of supervision of offenders conditionally sentenced or conditionally released;

"5. Requests the Committee on Crime Prevention and Control to conduct periodic reviews of the progress attained in this field;

3/ Ibid., sect. E.

4/ A/CONF.144/IPM.5.

5/ General Assembly resolution 217 A (III) of 10 December 1948.

6/ General Assembly resolution 2200 A (XXI) (annex) of 16 December 1966.

"6. Requests the Secretary-General to assist Member States, at their request, in the development of treaties on transfer of supervision of offenders conditionally sentenced or conditionally released, and to report regularly thereon to the Committee.

"Annex

"MODEL TREATY ON THE TRANSFER OF SUPERVISION OF OFFENDERS WHO HAVE BEEN CONDITIONALLY SENTENCED OR CONDITIONALLY RELEASED

"The _____ and the _____

"Desirous of further strengthening international co-operation and mutual assistance in criminal justice, on the basis of the principles of respect for national sovereignty and jurisdiction and of non-interference in the internal affairs of States,

"Believing that such co-operation should further the ends of justice, the social resettlement of sentenced persons and the interest of the victims of crime,

"Bearing in mind that the transfer of supervision of offenders conditionally sentenced or conditionally released can contribute to an increase in the use of alternatives to imprisonment,

"Aware that supervision in the home country of the offender rather than enforcement of the sentence in a country where the offender has no roots also contributes to an earlier and more effective reintegration into society,

"Convinced, therefore, that the social rehabilitation of offenders and the increased application of alternatives to imprisonment would be promoted by facilitating the supervision of conditionally sentenced or conditionally released offenders in their State of ordinary residence,

"Have agreed as follows:

"ARTICLE 1

"Scope of application

"1. This Treaty shall be applicable, if, according to a final court decision, a person has been found guilty of an offence and has been:

"(a) Placed on probation without sentence having been pronounced;

"(b) Given a suspended sentence involving deprivation of liberty;

"(c) Given a sentence, the enforcement of which has been modified (parole) or conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

"2. The State where the decision was taken (sentencing State) may request another State (administering State), to take responsibility for applying the terms of the decision, (transfer of supervision).

"ARTICLE 2

"Channels of communications

"3. A request for the transfer of supervision shall be made in writing. The request, supporting documents and subsequent communication shall be transmitted through diplomatic channels, directly between the Ministries of Justice or any other authorities designated by the Parties.

"ARTICLE 3

"Required documents

"4. A request for the transfer of supervision shall contain information on the identity, nationality and residence of the sentenced person. The request shall be accompanied by the original or a copy of any court decision referred to in the preceding provision and a certificate that this decision is legally binding (res judicata).

"5. The documents submitted in support of a request for transfer of supervision shall be accompanied by a translation into the language of the requested State or into another language acceptable to that State.

"ARTICLE 4

"Certification and authentication

"6. Subject to national law and unless the Parties decide otherwise, a request for transfer of supervision and the supporting documents thereto, as well as the documents and other material supplied in response to such a request, shall not require certification or authentication.*

"ARTICLE 5

"Decision on the request

"7. The competent authorities of the administering State shall examine what action to take on the request for supervision in order to comply, as fully as possible, with the request under their own law, and shall promptly communicate their decision to the sentencing State.

"ARTICLE 6

"Dual criminality

"8. A request for transfer of supervision can be complied with only if the act on which the request is based would constitute an offence if committed in the territory of the administering State.

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* The laws of some countries require authentication before documents transmitted from other countries can be admitted in their courts and, therefore, would require a clause setting out the authentication required.

READEX FICHE

"ARTICLE 7

"Grounds for refusal*

"9. If the administering State refuses acceptance of a request for transfer of supervision, it shall communicate the reasons for refusal to the sentencing State. Acceptance may be refused where:

"(a) The sentenced person is not an ordinary resident in the administering State;

"(b) The act is an offence under military law, which is not also an offence under ordinary criminal law;

"(c) The offence is in connection with taxes, duties, customs or exchange;

"(d) The offence is regarded by the administering State as being of a political nature;

"(e) The administering State, under its own law, can no longer carry out the supervision or enforce the sanction in the event of revocation because of lapse of time.

"ARTICLE 8

"The position of the sentenced person

"10. Whether sentenced or standing trial, a person may express to the sentencing State his or her interest in a transfer of supervision and his or her willingness to fulfil any conditions to be imposed. Similarly, such interest may be expressed by his or her legal representative or close relatives. Where appropriate, the Contracting States shall inform the offender or his or her close relatives of the possibilities under this Treaty.

"ARTICLE 9

"The rights of the victim

"11. The sentencing State and the administering State shall ensure in the transfer of supervision that the rights of the victims of the offence, in particular his or her rights to restitution or compensation, shall not be affected as a result of the transfer. In the event of the death of the victim, this provision shall apply to his or her dependants accordingly.

"ARTICLE 10

"The effects of the transfer of supervision on the sentencing State

"12. The acceptance by the administering State of the responsibility for applying the terms of the decision rendered in the sentencing State shall extinguish the competence of the latter State to enforce the sentence.

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* When negotiating on the basis of this Model Treaty, States may wish to add other grounds for refusal or conditions to the list, relating in this section, for example, to the nature or gravity of the offence, to the protection of fundamental human rights, or to considerations of public order.

"ARTICLE 11

"The effects of the transfer of supervision on the administering State

"13. The supervision transferred upon agreement and the subsequent procedure shall be carried out in accordance with the law of the administering State. That State alone shall have the right of revocation. That State may, to the extent necessary, adapt to its own law the conditions or measures prescribed, provided that such conditions or measures are, in terms of their nature or duration, not more severe than those pronounced in the sentencing State.

"14. If the administering State revokes the conditional sentence or conditional release, it shall enforce the sentence in accordance with its own law without, however, going beyond the limits imposed by the sentencing State.

"ARTICLE 12

"Review, pardon and amnesty

"15. The sentencing State alone shall have the right to decide on any application to reopen the case.

"16. Each Party may grant pardon, amnesty or commutation of the sentence in accordance with the provisions of its Constitution or other laws.

"ARTICLE 13

"Information

"17. The Contracting Parties shall keep each other informed, in so far as it is necessary, of all circumstances likely to affect measures of supervision or enforcement in the administering State. To this end they shall transmit to each other copies of any relevant decisions in this respect.

"18. After expiration of the period of supervision, the administering State shall provide to the sentencing State, at its request, a final report concerning the supervised person's conduct and compliance with the measures imposed.

"ARTICLE 14

"Costs

"19. Supervision and enforcement costs incurred in the administering State shall not be refunded, unless otherwise agreed by both the sentencing State and the administering State.

"ARTICLE 15

"Final provisions

"20. This Treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible.

"21. This Treaty shall enter into force on the thirtieth day after the day on which the instruments of ratification are exchanged.

"22. This Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

"23. Either Contracting Party may denounce this Treaty by giving notice in writing to the other Party. Such denunciation shall take effect six months following the date on which it is received by the other Party.

"In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

_____ _____ _____

Done at _____ on _____ in the _____
and _____ languages (both) texts being equally authentic."
(all)